THE HISTORY OF THE ELASTIC FEATURE OF THE FORDNEY-McCUMBER TARIFF

by

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PREFACE

This study represents an endeavor to trace the history of the elastic feature of the Fordney-McCumber tariff of 1922. The purpose of this investigation is to secure information in regard to the flexible feature of this tariff. In order to do this a study was first made of the origin of the sections of the act which provide for a flexible tariff, and the arguments pro and con during the passage of the act through Congress. An attempt was also made to discover how tariff flexibility has worked, when it has been put into actual operation by the President.

The method used was: to become acquainted with the primary and secondary sources of material which might contain information in regard to the flexible feature of this bill.

The primary sources used were the Congressional Record, Annals of Congress, United States Statutes at Large, Annual Reports of the United States Tariff Commission, Congressional Digest, Reports of the United States Tariff Commission to the President of the United States, speeches of representatives and senators, Senate Documents and the Tariff Act of 1922.

Some of the secondary sources used were the United States Daily, The American Year Book, Dictionary of Tariff, International Year Book, and periodicals.

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CHAPTER I. INTRODUCTION

In the consideration of the elastic feature in the recent tariff it seems advisable to give a short summary of the early history of tariff in our country. The first tariff law of our country under our present Constitution was passed in 1789. This tariff was mainly for revenue but the protective principle is mentioned.[1] The tariff of 1816 marks the beginning of our distinctive policy of protection to our home industries. The laws of 1824 and 1828 were of the same type as the law of 1816 only the rates were very much higher.[2]

The Tariff Act of 1832 restored in the main the protective system of 1824, and the protective policy seemed to be at a point where the protectionists could advocate its permanent retention.[3]

The Walker tariff of 1846 was passed when Polk was President and while the Democrats believed in free trade principles the idea of protection appears in some sections of this bill.[4]

1. Annals of Congress. Congress I, Vol. II., (1789-1791), Appendix p. 2129.
2. United States Tariff Commission, "Tariff History, United States," Dictionary Of Tariff, (1924), p. 752.
3. Dewey, D. R., Financial History Of the United States, (1922), p. 484.
4. Ibid. p. 250.

In 1861 the Morrill Act was passed and it is said of it, that it was "avowedly protective".

In 1887 President Cleveland in his third annual message to Congress devoted his message almost entirely to the tariff. He referred to the tariff laws as illogical, vicious, and inequitable and as a source of unnecessary taxation. He urged a general reduction of the duties.[1]

The tariff question was involved in politics after the Civil War, but in 1888 it became a strong party measure, and in the campaign of 1888 the tariff question was the issue squarely presented to the electorate.[2]

The tariff bills passed during the Civil War were highly protective and the tariff laws remained that way,[3] until the passage of the Wilson-Gorman bill of 1894, which reduced the tariff rates to some extent.[4]

The Dingley Act of 1897 and the Payne-Aldrich bill of 1909 raised the rates and the protective feature was prominent in both bills.[5]

1. Cleveland, Grover "Third Annual Message", Messages and Papers of the Presidents, Vol., VIII (1881-1889), pp. 580-591.
2. Taussig, F. W., "Free Trade and the Tariff", p. 254.
3. United States Tariff Commission, Tariff History, United States, Dictionary of Tariff Information, (1924), p. 754.
4. Dewey, D. R. Financial History of the United States, (1922), p. 456.
5. Ibid. p. 484.

Wilson was elected President in 1912. He called an extra session of Congress and the tariff was revised, and lowered; as a result the Underwood tariff bill of 1913 was passed by this Congress.[1] This act was in operation about nine months when the World War broke out and commerce was disturbed so it would be hard to make a statement about the real effect of this tariff on business.[2]

After the World War a demand came for a new tariff and the Emergency bill of 1921 was passed.[3]

It was during this period that the Tariff Commission was appointed. It was appointed May 15, 1882 and it was composed of 9 members. This commission was to thoroughly investigate all questions relating to "the agricultural, commercial, mercantile, manufacturing, mining and industrial interest of the United States, so far as the same may be necessary to the establishment of a judicious tariff, or a revision of the existing tariff, upon a scale of justice to all interests;" this commission was to make a final report of its investigations to Congress in December of 1882.[4]

Most of the Commission's recommendations were disre-

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1. United States Tariff Commission, "Tariff History, United States, "Dictionary of Tariff Information, (1924),p.757.
2. United States Tariff Commission, "Tariff History, United States,"Dictionary of Tariff Information, (1924), p.756.
3. Ibid, p. 757.
4. "Public Laws of the United States of America", United States Statutes, 47 Congress, 1 Session, Vol. 47, (1881-1883), p. 64.

garded, but Dr. Taussig said that the tariff of 1883 was a better law because of the recommendations. There was no special appropriation for funds to carry on the work of this commission and they were paid from the treasury fund. This tariff commission was not a permanent organization.

After the passage of the tariff act of 1909, it became the duty of the President to find out if foreign countries were discriminating against the United States in their tariff laws, and if they were the President was to adjust the maximum and minimum rates accordingly. The President was also authorized under this law to appoint officers to help him to secure this information. President Taft, acting upon this authority, appointed a tariff board of three members, later increased to five members, to assist in securing information.

The public wanted a permanent commission appointed, to help take the tariff out of politics, and with the economic and industrial problems that had come up as a result of the World War there was a real need for a commission to secure information, and to help adjust the tariff questions; as a result of this a permanent tariff commission was appointed under the Revenue Act of 1916.[1]

1. United States Tariff Commission "Tariff History, United States" Dictionary of Tariff Information, pp. 724-725.

This Commission was to be known as the United States Tariff Commission. It was to be appointed by the President with the Senate's approval and to have six members, and not more than three of its members were to belong to the same political party. This Commission was to aid the President, the Committee on Ways and Means of the House and the Senate Committee on Finance whenever they needed aid, and they were to make an annual report to the President every December.[1] This Tariff Commission as an organization is still functioning.

CHAPTER II. ENACTMENT OF FORDNEY-McCUMBER TARIFF

In any country changes in economic conditions are brought about by war and there must be a readjustment after the war is over. This was the condition in the United States at the close of the World War. During the war there was an overproduction of farm products, to supply the world's needs. Industries and manufacturing had speeded up and when the war closed there was a lessened demand for their products.

As early as 1915 there were some who felt that one of the results of the European war would be the revision of the tariff. The United States must readjust her protective sys-

1. The Revenue Act of 1916 United States Statutes at Large, Vol. XXIX, Part I Public Laws (1915-1917), pp. 795-797.

tem and line it up with the economic changes that had come as the result of the war. The United States had had to expand most of her industries during the war and some felt that a tariff was necessary to protect them, if the United States wished to be economically independent and be prepared for future emergencies. Capital had also been invested in these industries, and it would be ruined by foreign competition if not protected. Our economic policy must be one of national self-sufficiency.[1]

In the early part of 1919 certain industries became alive to the need for a new tariff as affecting their interests and made their demands. "Among these industries are the woolen ones, which fore see higher schedules, the cotton ones, which are not eager for any immediate legislation--and the silk men, who favor protection as against Japanese competition". "The two associations in the industry, the American and the National, each has its tariff committee and it is expected that their work will occupy at least ten to eighteen months. Their purpose will be to arrive at costs of production here and abroad." When this could be arrived at and data gathered, they believed that it would show the need for a higher tariff rate on their products.[2]

1. Brooks, Robert C., "Our Next Tariff", The New Republic, Vol. IV, (August 7, 1915), p. 18.
2. "As to New Tariff Issues for Wool, Cotton and Silk," The Literary Digest, Vol. LXI, (June 14, 1919), p. 137.

Some of the dry-goods merchants did not advocate a high tariff, as prices were high enough.[1]

Before the World War the United States had establishments engaged in the manufacture of coal tar dyes, and they employed about 528 persons. In 1917 there were 190 firms engaged in this industry employing more than 20,000 people showing a remarkable growth in less than four years.[2]

Manufacturers had invested capital amounting to $200,000,000 in the dye making industry by 1917,[3] and one corporation had spent more than $1,800,000 on experiments. In 1919 the United States was exporting more than $20,000,000 worth of dyes to other counties.[4]

The dye section of the American Chemical Society in 1919 began to call special attention to their need of protection. Their society met in Philadelphia in 1919 and passed resolutions calling attention to the fact that the manufacturer of dyes used the same general processes and materials that were used in the manufacture of explosives and poison gases, and the importation of dyes was a military question; and it was also a menace to the defense of our

1. "As to New Tariff Issues for Wool, Cotton and Silk," The Literary Digest, Vol. LXI, (June 14, 1919), p. 137.
2. "American Dye Industry Now Leads the World," Current Opinion, Vol. LXVI, (January 1919), p. 64.
3. McKerron, N. G. "The Truth About the Dye Industry" Scientific American, Vol. CXXIV (May 21, 1921), p. 40.
4. "American Dye Industry Now Leads the World", Current Opinion, Vol. LXVI, (January 1919), p. 64.

country, if these dye products were imported in time of peace, as this would tend to discourage the establishment of an industry that is so essential to national defense in time of war

This Society also asked that a copy of these resolutions be sent to the President of the United States and to the chairman of the appropriate committees of Congress.[1] As a result of this dye agitation Congress began to consider protective measures necessary to protect this industry, and extensive hearings were held by the Ways and Means Committee of the House of Representatives on the dye situation in 1919.[2]

In 1919 the agricultural regions were not concerned over the tariff, as more wheat, cotton, and butter were exported than in 1917, and 1918. The total value of the crops was greater than in any year since the beginning of the war and the value of live stock was also greater.[3]

In 1920 the total value of all farm crops was \$13,300,000,000 compared with \$16,000,000,000 in 1919 and \$14,300,000,000 in 1918. Live stock in 1920 had also de-

1. "The Dye Industries", _Science U. S._, Vol. L, (October 17, 1919), p. 366.
2. "Millions for the Dye War" _Literary Digest_, Vol. LXII (September 13, 1919), p. 26.
3. Houston, "The Year in Agriculture," _Yearbook of the Department of Agriculture_, (1919), p. 15, 16, 17.

clined in price.[1] "The prices of wheat, corn, meats, cotton, suddenly were cut to one-half, even to one-third of the war figures. The farmers were as helplessly ignorant concerning the cause of this decline as they had been of the previous rise. They clamored vociferously for a remedy.[2]

The Republican party offered one in the tariff, when they put the following plank in their platform in 1920. "The Republican party reaffirms its belief in the protective principle and pledges itself to a revision of the tariff as soon as conditions shall make it necessary for the preservation of the home market for American labor, agriculture and industry.[3] The Republicans carried the election of 1920 and they began immediately to plan for a revision of the tariff. This led to the passage of the emergency tariff of 1921.[4] The agricultural interest demanded the same protection for agriculture, that other industries received[5] -- and wanted an embargo on agricultural imports and passed resolutions asking Congress for "the same consideration in

1. Meredith, E. T. The Year in Agriculture, Yearbook of the Department of Agriculture, (1920), p. 17.
2. Taussig, F. W., "The Tariff Act of 1922", The Quarterly Journal of Economics, Vol. XXXVII, (1922-1923), p. 4.
3. Republican National Committee, "Senator Harding and the Tariff Issue," Republican Campaign Text-Book, (1920), p. 487.
4. Taussig, F. W., "The Tariff Act of 1922", Quarterly Journal of Economics, Vol. XXXVII, (1922-23), p. 2.
5. "Resolutions of the American Farm Bureau Federation", Hoard's Dairyman, Vol. LIX, (March 19, 1920), p. 558.

tariff matters as industry gets" which is "the least we ought to be satisfied with".[1] The Grange, a farm organization, also wanted "fair consideration of agriculture in any revision of the tariff".[2] These demands and the position of the Republican party led to a general revision of the tariff act after the Emergency Act which was passed May 27, 1921. The Fordney-McCumber bill was the outcome of this general revision, and it contained the elastic feature which we are to consider. This bill became a law September 21, 1922.[3]

CHAPTER III. HISTORY OF THE ELASTIC FEATURE

The Fordney-McCumber tariff originated in the Ways and Means Committee of the House under the leadership of Representative Fordney of Michigan. The committee began their hearings on the tariff question as early as January, 1921. The bill passed the House and was sent to the Senate July 21, 1921.

The House bill when completed did not have the elastic feature in it, but did contain the plan for American valua-

1. "Farm Bureau Federation Meets" Hoard's Dairyman, Vol. LX,(December 17, 1920), p. 963.
2. Marquis, J. C. "Fifty Years of the Grange", Country Gentleman, Vol. LXXXV, (April 17, 1920), p. 15.
3. Taussig, F. W., "The Tariff Act of 1922". Quarterly Journal of Economics. Vol. XXXVII, (1922-1923), pp. 1-6.

tion: that is, the rates were to be based on the American valuation which is the American selling price of any article manufactured or produced in the United States including the cost of all coverings, costs, charges and expenses necessary to get the article ready for the market plus a reasonable profit.[1]

The tariff bill in its original form pas ed the House and was sent to the Senate where it was referred to the Committee on Finance July 22, 1921. "Hearings upon the bill were begun July 25, 1921 and continued to and including August 31, 1921. In the meantime the internal revenue bill passed the House and was referred to the Committee on Finance August 22, 1921". -- "Hearings upon the tariff bill were immediately resumed November 3, 1921" and completed January 9, 1922. Upon the completion of the hearings the Committee on Finance began at once the preparation of the tariff bill under the leadership of Senator McCumber of North Dakota. It was at this time that the elastic provisions, Sections 315, 316, and 317 were written into the bill.[2]

The idea of this elastic feature of this bill was not new, as President Harding had advocated it in his message be-

1. "Tariff Act of 1922", Section 402f., p. 103.
2. McCumber, "Tariff Bill", Senate Documents, 7950, 67 Congress, 2d Session, No. 595, Vol. I, (April 10, 1922), p. 2.

fore a joint session of Congress December 6, 1921, when he said in this message that "Every contemplation, it little matters in which direction one turns, magnifies the difficulty of tariff legislation, but the necessity of the revision is magnified with it. Doubtless we are justified in seeking a more flexible policy than we have provided heretofore. I hope a way will be found to make for flexibility and elasticity, so that rates may be adjusted to meet unusual and changing conditions which cannot be accurately anticipated. There are problems incident to unfair practices, and to exchanges which madness in money have made almost unsolvable. I know of no manner in which to effect this flexibility other than the extension of the powers of the Tariff Commission, so it can adapt itself to a scientific and wholly just administration of the law. I am not unmindful of the constitutional difficulties. These can be met by giving authority to the Chief Executive who could proclaim additional duties to meet conditions which the Congress may designate. At this point I must disavow any desire to enlarge the Executive's power or add to the responsibilities of the office. They are already too large. If there were any other plan I would prefer it.

"The grant of authority to proclaim would necessarily bring the Tariff Commission into new and enlarged activities

because no executive could discharge such a duty except upon the information acquired and recommendations made by this commission. But the plan is feasible, and the proper functioning of the board would give us a better administration of a defined policy than ever can be made possible by tariff duties prescribed without flexibility. --- In this proposed flexibility, authorizing increases to meet conditions so likely to change, there should also be provisions for decreases. A rate may be just today and entirely out of proportion six months from today. If our tariffs are to be made equitable and not necessarily burden our imports and hinder our trade abroad, frequent adjustment will be necessary for years to come. Knowing the impossibility of modification by act of Congress for anyone on a score of lines without involving a long array of schedules, I think we shall go a long ways toward stabilization if there is recognition of the Tariff Commission's fitness to recommend urgent changes by proclamation."[1]

The Finance Committee following the suggestion of the President changed the plan of fixing the rates from the American to foreign valuation and introduced the elastic feature for the first time, which is found in this bill

1. "Address by the President of the United States", Congressional Record, 67 Congress, 2 Session, Vol. LXII, Pt. 1, (December 6, 1921), p. 37.

under Title III, Special Provisions, Section 315, 316 and 317. A special study has been made of the elastic provision of this bill and recorded in this thesis.

The elastic feature confers the following powers upon the President:

Section 315 authorizes the President, after investigation by the Tariff Commission, to proclaim such changes in classification or increases or decreases in the rate of duty within the limit of 50 per cent as may be necessary to equalize the differences in the costs of production of articles in the United States and the principal competing foreign country. This section also provides that when such action by the President does not equalize differences in costs of production of the article or articles upon which the duty is assessed, he can place the duty upon the American selling price.

Certain limitations on the power of the President in administering these provisions are: no rate of duty can be proclaimed in excess of 50 per cent of existing rate. An article cannot be transferred from the dutiable list to the free list or vice versa, nor shall the form of any duty be changed.

Section 316 declares unlawful any unfair methods of competition and unfair acts in the importation and sale of

foreign articles. It provides that the Tariff Commission shall investigate alleged violations of these provisions and shall report on them to the President, who is empowered to assess certain additional duties to offset practices complained of and to forbid the entry of the imported articles in question.

Section 317 deals in a comprehensive manner with discrimination by foreign countries against the trade of the United States. It imposes upon the Tariff Commission the duty to ascertain and at all times to be informed whether there are any discriminations against the United States commerce, as enumerated in the Section, by any country; and if there is to bring it to the attention of the President with recommendations. The President is authorized, whenever he shall find the existence of such discriminations to specify and proclaim new or additional rates of duty to offset such practices, or he can exclude from importation into the United States such articles from the offending country if he deems that the public interests of the United States require it.[1]

"These elastic features are regarded by the committee as undoubtedly constitutional (Field V. Clark 143 U. S.,

1."Tariff Act of 1922", pp. 93-97.

649)" and will help to prevent an accumulation of cases that will eventually call for a revision of the tariff.[1]

This bill was reported to the Senate by Senator McCumber, chairman of the Finance Committee. When he reported the bill he referred to the elastic provisions of the bill in the following manner: "With the rapid changes going on in the world in the cost of production, in the fluctuation of exchange, in the increase of labor's cost in some cases and decrease in others, any rate which we may now establish as being the proper rate, may be found to work an injustice either as against the American manufacture or the American importer. We have attempted to meet this, by a provision permitting the Executive, on a finding of facts that the rates are so high that they amount to an embargo or are unjust or too obstructive to fair competition and fair commerce or so low that our industries are being destroyed, to lower or advance the rates within fixed limits to meet those situations." The President will have to guide him all the data which an industrious Tariff Commission has gathered and is gathering in relation to our foreign commerce. That commission, therefore, will become a forum in which any complaints may be lodged as to the unfairness or the injustice

1. "Tariff Bill", Senate Document 7950, No. 595, Vol. I, p. 3.

of any rate, and through the President we will be able to rectify any injustice that may become pronounced by future fluctuations in market prices.[1]

In contrast with this the minority report from the Finance Committee was given by Senator Simmons and the elastic clause was referred to in the following manner: "The rates as fixed in the bill subject to the presidential increases will be manifestly sufficient to protect the monopolies and monopoly controlled industries in their prices and leave them an alarming margin for further increasing their profits. Undoubtedly the effect upon our export trade of any undue curtailment of imports will, on account of the present economic and financial condition in the balance of the world, especially in the countries of our allies and enemies in the war, be more serious to-day and fraught with more danger to our national prosperity than at any other time in our history.[2] The rates of the bill and powers given the President were undoubtedly concessions to the demands of protected industry and were based upon selling price instead of cost of production. If the rates and policies of this bill are adopted there will be an indus-

1. Congressional Record, 67 Congress, 2 Session, Vol. LXII, Pt. 6, (April 20, 1922), p. 576.
2. "Tariff Bill", Views of the Minority, Senate Document 7950, 67 Congress, 2 Session, Report 595, Pt. 2, p. 8.

trial upheavel in the country."[1]

In the debate which followed the introduction of this bill in the Senate, the elastic feature was attacked on the grounds that it vested too much power in the hands of one man. Senator Watson of Georgia was one of the senators who made a special plea against it on the grounds that this elastic feature was very dangerous because it would tend to make conditions unsettled, and one man would have too much power, and that this was a delegation of authority that was never intended, when the constitution was framed by our forefathers.[2] Senator Underwood remarked: "And now our Republican friends say in delegating this authority: 'We are incompetent, we are unable to serve you longer in this matter.'"[3] Senator Heflin declared that the people of the United States would not have voted for members of this Congress, if these men had told the people that they were going to vote to take the power of taxing the people out of the hands of Congress and give it to the President.[4]

This power makes it possible for the President to re-

1. Ibid, p. 9.
2. Congressional Record, 67 Congress, 2 Session, Vol. 62, Pt. 7, (May 17, 1922), p. 7108.
3. Ibid, Pt. 11, (August 11, 1922), p. 11205.
4. Ibid, (August 19, 1922), p. 11597.

ceive evidence in secret or in writing, to consult different authorities, and no one knows who is influencing the Executive, or who is fixing the tax rate.[1] The President can also outlaw certain importers and exporters and their agents without a trial, without a hearing, and then penalize their actions. If he is uncertain about the entrance of goods into the United States, he can even go a step further and ask the Treasurer to forbid their entrance. This gives the President power to govern the collection of duties at the custom house if he so desires.[2]

Senator Reed of Missouri said of this power that "We are establishing a precedent, which if it is sustained by the courts will be followed by subsequent Congresses", and we are transferring the taxing power of Congress to the President and in doing this we are breaking down the greatest safe guard that our country has as there is no court back of the President's decrees. The President has too many duties now without this added responsibility, and he will be unable to handle this extra burden. It will result in his delegating this duty to someone else, or he will have to receive aid from some other department.[3] Underwood said, It will give a greater opportunity for political corruption to

1. Ibid, Pt. 11, (August 11, 1922), p. 11207.
2. Ibid, Pt. 7, (May 17, 1922), p. 7111.
3. Ibid, Pt. 11, (August 11, 1922), p. 11223.

enter in and influence the President in his decisions. It may extend further and influence future elections. The Tariff Commission may help by reporting its findings to the President, but he does not have to take their advice as he can consult[1] "the Department of Justice, the Department of State, or the Department of Commerce, or he may consult the clerks in his own office, or he may, if he desires, after the ascertainment of the facts, consult the special interests which are going to profit by the levying of this taxation".[2]

Reed further objected because the bill as amended requires that there shall be an interim of 60 days between the time of the President's proclamation of a change in the rate of duty on a commodity and the time it takes effect to give the importers and firms a chance to finish up any business transactions that are under way. This 60 days time that is given would furnish ample time for a special session of Congress to meet and adjust the rates.[3] The 60 days interim was later changed to 15 days.[4]

The elastic provisions of the Tariff bill were favored by Senator Edge of New Jersey. The Senator felt that there

1. Ibid, (August 11, 1922), pp. 11206-11207.
2. Ibid, Pt. 11, (August 11, 1922), p. 11207.
3. Ibid, Pt. 11, (August 11, 1922), p. 11213.
4. Ibid, Pt. 12, (September 20, 1922), p. 12986.

was no more danger of the President's being influenced by political power than of the Senate's being so influenced. The Senators are approached on every hand and they feel that they must look after those requests on account of reelection. The President is not so apt to invite political control, as he is President of the entire country and does not represent any particular congressional district, farming sections, or any other activity. He would be obliged to listen to any suggestions for a change, but this would not need to make his decision sectional. The President should be trusted to look after the interests of the country. This new departure in the adjusting of the tariff rates ought to make for a more scientific tariff, but it will be impossible to get a tariff bill that will be scientific in every respect. This elastic feature has a practical value due to the fact that it provides[1] for the quick alteration of the tariff law, and it will eliminate frequent tariff revisions.[2]

The Congress has authorized the Interstate Commerce Commission to fix and adjust freight rates, and Congress should have the same power to lay down rules for the President to adjust the rates in the tariff laws. It is the same

1. Ibid, Pt. 11, (August 10, 1922), pp. 11186-11195.
2. Ibid, Pt. 6, (April 24, 1922), p. 5875.

principle that is applied in the power given to the Interstate Commerce Commission. The President's act would be purely administrative; as Congress delegates the authority to ascertain facts and fix rates accordingly.

In advising the 60 days interim between the President's proclamation in change of rates on any commodity and the time it takes effect, McCumber referred to this as necessary so that firms that are contracting under the old rate from Europe, will have notice of the change in rates so as to adjust their business, as it might ruin them financially. This is the only reason for this interim of 60 days,[1] and no amendment to the tariff bill adjusting rates could be pushed through Congress in 60 days. This is the reason why it was proposed to let the President change the rates.[2]

The President in his letter to McCumber, while the tariff bill was pending in Congress, favored designating the Tariff Commission as "the agency for scientific investigation and the source of dependable information."

His letter reads as follows: --- "I think we ought to make the Tariff Commission all that it is designed to be --- the agency for scientific investigation and the source of dependable information on all tariff problems. --- In view of the fact that Congress, in providing for flexibility, must bestow some exceptional powers upon the President, I

1. Ibid, Pt. 11, (August 10, 1922), p. 11199.
2. Ibid, Pt. 11, (August 11, 1922), p. 11225.

should very much prefer that in the same act that Congress definitely name the Tariff Board as the source of information and recommendation upon which the President may proclaim changes in rates of duty. If the power to modify rates were given to the President I should immediately proclaim the Tariff Board as the agency of investigation and recommendation, because the President could not deal with the situation in any other practical manner. I think it more seemly, therefore, to have Congress definitely designate the Tariff Board as the agency to be employed by the President in the exercise of executive power which it is proposed to bestow."[1]

Amendments were passed amending Section 315, 316 and 317, giving the Tariff Commission power to investigate and assist the President in his investigations and to make recommendations regarding the flexibility provisions of these sections.[2]

The minority members of the Senate felt that the elastic features of the tariff would affect the stability of our industrial interests by bringing in the element of uncertainty, and it would make it possible for one interest to attack another through the tariff.[3] They argued that

1. Ibid, Pt. 11, (August 11, 1922), p. 11211.
2. Ibid, Pt. 11, (August 11, 1922), pp. 11241-11242.
3. Ibid, Pt. 11, (August 10, 1922), p. 11130.

it would tend to make business conditions very uncertain both at home and abroad as the rates can be changed at any time, and only a short notice is to be given. Changes can also be made in favor of the American valuation plan against foreign valuation, from the specific duty to the advalorem and vice versa. The rates may be decreased or increased, and there is a question as to the President's power, whether he can change an article from the free list to the dutiable list and vice versa. If this bill passed, Senators Underwood and Simmons wanted to be assured that provisions would be made to prevent this changing from one duty to another.[1] An amendment was passed prohibiting these changes.[2] It was argued that the passage of this bill will restrict our foreign market and foreign countries will find it hard to ship in goods, and this will destroy foreign competition. "In other words this proposed law contemplates a tariff wall which will foster and build up monopolies in this country and do what the beneficiaries of the protective system have clamored for, for 30 years, and which Congress has never intentionally heretofore granted them —— that is, a protective tariff to protect their profits, a tariff that makes it possible for them to pyramid their

1. Ibid, Pt. 7, (May 17, 1922), pp. 7108-7112.
2. Ibid, Pt. 11, (August 11, 1922), p. 11236.

profits on the cost of production, and then stand between them to drive the foreign competitor out of the American market". Senator Simmons says that this may result in our trade being practically wiped out.[1]

Senator Jones objected to this bill as it gave the President the right to create an absolute embargo upon some importations like foreign toys.[2]

The majority members of Congress argued that this elastic provision would help to stabilize conditions in the business world. They called attention to the fluctuation of prices in business and trade, and that there must be arrangements made to meet these conditions. The readjustment of the tariff rates would help to do this. Business conditions are so unsettled that it is absolutely impossible for any Congress to enact a scientific schedule under these changing conditions, and for this reason the laws should be flexible, and there must be some authority designated to make the necessary adjustments.

Some felt that this elastic tariff provision would result in a degree of uncertainty to business, but if there were an understanding of the way in which the flexibility provision works or will operate, that fear would be removed.

1. Ibid, Pt. 8, (June 12, 1922), p. 8564.
2. Ibid, Pt. 6, (April 24, 1922), p. 5884

The agency which handles the investigations for the President will give both the interested and disinterested parties in the business investigated a chance to be heard, and then the final decision is made as to rate necessary to adjust differences. This should not disturb industry, but the adjusting of rates to meet economic differences should have a stabilizing influence and prevent a general revision of the tariff. With the information required before a change of rates takes place it should be impossible for the President to make a change that would seriously damage any industry.[1]

It is also necessary to give the President power to raise the tariff not more than 50 per cent or lower it more than 10 per cent, as the 50 to 50 per cent idea would soon put some of our American industries out of business.[2] American industries should be protected so as to make American nationally independent. The rates are so adjusted that protection can be given to new industries that need protection, and our rates should make for equality in competition in the American markets.[3]

In referring to the toy industry it was said that the rates would only have to be changed on about 20 per cent of

1. Ibid, Pt. 6, (April 24, 1922), pp. 5875-6.
2. Ibid, Pt. 11, (August 10, 1922), pp. 11190-11194.
3. Ibid, Pt. 6, (May 8, 1922), pp. 6503-6505.

the American toys. Rates would also need changing on dyes. This would protect the New American industries and give employment to our men. We do not want our own industries and trade destroyed.[1]

The minority group were also assured that it would not be possible for the President to change articles from free list to the dutiable list and vice versa, nor can he make a change in the form of duty.[2]

The constitutionality of Sections 315, 316 and 317 called forth many arguments in Congress pro and con.

Senator Walsh attacked the constitutionality of the flexible provisions. He felt that the Constitution of the United States gave Congress no right to vest this authority in the President and he brings out the following points to prove his statement:

"The Constitution in express terms vests all legislative power granted by it in Congress (Art. I Sec. I). Specifically it grants to Congress power to lay and collect taxes, duties, imposts and excises, and to regulate commerce with foreign nations. These powers by repeated adjustments and according to the views of all commentators, are exclusive. These powers cannot be delegated to anyone else."

"One of the settled maxims in constitutional law is

1. Ibid, Pt. 6, (April 24, 1922), p. 5884.
2. Ibid, Pt. 11, (August 11, 1922), p. 11236.

that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain, and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment wisdom and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which this power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust." According to Locke the following principle that the "legislature neither must nor can transfer the power of making laws to anybody else, or place it any where but where the people have" is older than American constitutional law and not peculiar to our institutions.

The struggle to keep the taxing power in the hands of the representatives of the people rather than let it be exercised by the Executive, is closely associated with English liberty, and this idea is reflected in that provision of our Constitution "which requires that all bills for raising revenue shall originate in the House of Representa-

tives." Another principle which pervades our whole political system is that a "power conferred by the people upon anyone branch or department of the Government is not to be delegated by that branch or department to any other,"[1] and "No emergency however great can justify the surrender into the hands of the President the taxing power entrusted by the people to their representatives in Congress". If this encroachment upon the liberties of the people is either sanctioned or condoned, there is no man wise enough to foresee the ultimate consequence."[2]

The Committee in their report justified the constitutionality of the elastic provision when they included the following paragraph in their report, namely, "These elastic tariff provisions are regarded by the committee as undoubtedly constitutional (Field V. Clark, 143 U. S. 649)" but Senator Walsh replied this case affords no justification for the delegated legislative authority in this case, being based upon the tariff law of 1890.[3]

The Act of 1890 is not inconsistent with the principle that Congress cannot delegate legislative authority to the President, as this law did not in any real sense invest the President with the power of legislation, as the present

1. Ibid, Pt. 6, (May 8, 1922), p. 6494.
2. Ibid, Pt. 11, (August 10, 1922), p. 11180.
3. Ibid, Pt. 6, (May 8, 1922), p. 6494.

tariff law does. Congress itself prescribed the rate of duties to be laid, collected, and paid on 5 definite articles in the law of 1890. In the present law the number of articles are not limited, and the rate is not limited.

In the law of 1890 the President simply executed an act of Congress as the agent of the law making department "to ascertain and declare the event upon which the expressed will was to take effect, and the President had nothing to do with the fixing of the rate of duty,[1] as there were definite rates fixed and the President stayed within these limits. This is not the case in the law of 1922, as the fixing of the rate within certain limits is left entirely in the hands of the President. The power to fix the rate so there is a reasonable profit is also in his hands. The determining of these rates by the President is not constitutional.[2]

Senator Walsh contended that the President had three wide powers granted to him under the provisions of 315, 316, and 317, as he may either (1) raise or lower the rates, (2) change the classification of articles, or (3) change the form of duty. "The law however does not countenance vesting

1. Ibid, Pt. 6, (May 8, 1922), p. 6495.
2. Ibid, Pt.11, (August 11, 1922), p. 11206.

any such discretionary power in the executive, and the attempt to do so is fatal to the system of which it is an integral part. It is generally understood, that if there is to be a delegation of power to justify this, there must be laid down a clear rule of guidance for the executive officer and he must adhere to it. An attempt is made to do this in the present bill, but there is a serious obscurity in defining the President's duties.[1]

President Harding favors this new feature but when he was a senator and the Overman bill of 1918 was under consideration there was a question about the transfer of the powers of one department to another upon the order of the President. At that time the present executive said "If the Senate of the United States is going to accept an executive mandate --- Congress can only fittingly complete the program by delegating the taxing and appropriation power, adjourn and go home."

Senator Underwood says that this is the first time that Congress has attempted to surrender the power granted to it in the Constitution of the United States to an Executive, and it is not likely to be held constitutional.[2]

Senator Walsh objected to the power given to the Presi-

1. Ibid, Pt. 6, (May 8, 1922), p. 6497.
2. Ibid, Pt. 12, (September 19, 1922), p. 12887.

dent in Section 316 on the grounds that it authorizes the President to forbid the entry of goods into the United States when merchandise is coming in by unfair methods of competition until an investigation is made. "Just how he could find the facts if he has not sufficient information to satisfy him of its existence is difficult to understand."

"Equally obnoxious from a constitutional standpoint are the provisions authorizing the President to impose additional duties upon the imports from any country discriminating against American products----. He is further vested with discretion to make his proclamations by way of reprisal, extend to the whole of the offending country or to any part of it", and if any country disregards this he can exclude all products of that country if he deems it for the best interest of the United States.

"Here is a clear surrender of the power vested in the Congress to determine what is for the best interest of the United States with respect to taxation and foreign commerce."

The Senator also objected to this Section 316 as it gave the President the power to investigate as to unfair methods of competition and importation of merchandise into the United States that would be injurious to our industries.

It is also unfair because a half dozen of the foreign importers may be unfair in their dealings while a dozen would be fair and honorable business men, and these men would have to pay an increased duty of from 10 to 50 per cent and this would be unfair and ruin many of them. In other words the discretion vested in the President by Section 315 is made perfectly obvious and indisputable under the provisions of Section 316.[1]

Another objection to Section 316 was raised in regard to the Tariff Commission when it was said "that if this amendment carried it means the beginning of the end of the Tariff Commission" for by allowing them to recommend rates to the President it will throw the commission into politics.

Senator Walsh said congressmen cannot justify the objections made to this law, by referring to another law that has been passed by Congress at another time as, the law of 1916 under a Democratic President, that was equally as obnoxious as this one.[2] There is no excuse for giving the President a power which is questionable just because a Democratic President was given it. Congress has no authority to do this.

Section 317 was amended so that it became the duty of

1. Ibid, Pt. 11, (August 11, 1922), p. 11241.
2. Ibid, Pt. 11, (August 11, 1922), p. 11242.

the Tariff Commission to ascertain and be informed as to discriminations practiced against United States commerce by any foreign country and to call the President's attention to such discriminations if they existed.

Senator Walsh objected to this section and saw no need for these provisions in the bill, when the United States was at peace and had commercial treaties with nearly every nation of the world, and we have a treaty with Germany covering this very subject.[1]

When the Revenue Act of 1916 was passed the war was going on in Europe, and in this case "Does not the war power extend to legislation enacted in anticipation of war as well as to legislation which is enacted after the declaration of war?"

This section involves graver constitutional questions than any other section and presents a dangerous situation for the United States "because if the United States is to enter upon this policy no man can tell where the end will be."[2]

The question of the constitutionality of the elastic features of the tariff and the powers they conferred upon the President was defended in an able manner by both Sena-

1. Ibid, Pt. 11, (August 11, 1922), p. 11244.
2. Ibid, Pt. 11, (August 11, 1922), p. 11245.

tors McCumber and Smoot. Senator McCumber discussed the constitutionality of Sections 315, 316 and 317 by referring to the way that the amendments were drawn up. They were framed "by members of the Tariff Commission and Judge DeVries of the Court of Customs Appeals after an exhaustive study of all the questions and the decisions bearing upon this most important subject" had been made, so the legality of the measures were assured by them at the start. In his further discussion he said that the Constitution conferred certain rights upon Congress. "Section I of Article I " of the Constitution of the United States provides: The Congress shall have power to lay and collect taxes, duties, imposts and excises --- and so forth; and in the same section it is provided that the Congress shall have power --- to regulate commerce with foreign nations, and among the several states and so forth. Upon these two provisions of the constitution is based the power which we here impose upon the President acting through the Tariff Commission, not to fix duties himself, according to his own judgment, but ascertain facts and then lay a duty which will be prescribed by Congress to effectuate a certain result."

An example of the President's power and how it works is shown by the way the President would deal with Section 315. (a) He would "first adopt the American selling price

of the article as the basis on which the duty is to be levied, and then may either increase or decrease the rate within fixed limits, to effectuate the purpose declared".

"Subdivision (c) of the same section provides that the President may take into account --- the price at which like or similar merchandise is sold in the United States and competing foreign countries ---. After ascertaining what rate of duty will equalize these differences, the law directs him to apply that rate upon the standard of valuation which the law prescribes. The law does not state what these specific duties shall be, but it does direct that the duties shall measure up to a certain standard, to be determined by the facts, and that standard is equality of competition in the American market." In laying down these provisions Congress has delegated to the President certain powers within certain limitations.[1] "The whole purpose of this section is to secure equality of trade in the American markets. --- The President in making these changes according to rules laid down by Congress exercises no legislative function. He simply applies a rate to conform to the rule declared by Congress."[2]

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1. Ibid, Pt. 6, (May 8, 1922), p. 6503.
2. Ibid, Pt. 6, (May 8, 1922), p. 6505.

Senator Smoot in his defense of the bill stated that flexibility in tariff rates was not a new departure in tariff legislation, as the tariff laws of 1909 contained a maximum and minimum provision, the object of which was to protect our foreign commerce against discrimination and it was not considered unconstitutional, and this special provision is incorporated in the bill that is now before the Senate.[1]

This special section 2 that is referred to in the bill of 1909 reads as follows:

"That whenever, after the thirty-first day of March, nineteen hundred and ten, and so long thereafter as the President shall be satisfied, in view of the character of the concessions granted by the minimum tariff of the United States, that the government of any foreign country imposes no terms of restrictions either in the way of tariff rates or provisions, --- all articles when imported into the United States or any of its possessions ---, from such foreign country shall, except as otherwise herein provided, be admitted under the terms of the minimum tariff of the United States as prescribed by section one of this Act.---[2] Whenever the President shall be satisfied that the condi-

1. Ibid, Pt. 6, p. 5875.
2. "Tariff of 1909", United States Statutes at Large, 61 Congress, Vol. XXXVI, (1909-1911), p. 82.

tions which led to the issuance of the proclamation herein before authorized no longer exist, he shall issue a proclamation to that effect, and ninety days thereafter the provisions of the maximum tariff shall be applied to the importation of articles from such country. --- To secure information to assist the President in the discharge of the duties imposed upon him by this section, and the officers of the Government in the administration of the customs laws, the President is hereby authorized to employ such persons as may be required."[1]

The present bill includes this provision "and is strengthened by providing that countervailing duties shall apply not only to bounties granted by government but also to bounties granted by persons, partnerships, associations cartels, or corporations."

Our anti-dumping statutes have also been an application of the principle of flexibility in tariff making in order that the tariff might be a means of protecting our industry against foreign competition. Following these precedents and changing them to meet the conditions of today we have proposed to authorize the President under Section 315, 316, and 317 of the present bill to increase or decrease rates within a certain limit that limit prescribed by Con-

1. Ibid, p. 83.

gress; to change the basis of valuation if necessary; to prevent unfair methods used in competition, in importation of goods, and to impose a penalty on any foreign country that discriminates against American goods.

The Tariff Act of 1890 has also helped to establish the constitutionality of these measures as it vested discretionary power in the President.[1]

The particular part of that law which bears upon this is section 3 of that tariff law which reads as follows:

"That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January eighteen hundred and ninety-two, whenever, and so often as the President shall be satisfied that the Government of any country producing and exporting sugars, molasses, coffee, tea and hides, raw and uncured, or any of such articles, imposes duties or other exactiongs upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, teas, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that ef-

1. Congressional Record, 67 Congress, 2 Session, Vol. LXII, (April 24, 1922), p. 5874.

fect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of, or exported from such designated country as follows namely, sugar, molasses, coffee, tea, and hides."[1]

In the law of 1890 the power vested in the President was (a) to ascertain whether the laws of a foreign country imposing duties or other exactions were "reciprocally unequal and unreasonable"; (b) To suspend by proclamation the provisions relating to the free introduction of sugar and so forth; (c) to cause duties to be levied,[2] collected, and paid at the rates prescribed by the Congress; and (d) to decide the length of time such law could be justly suspended."

The constitutionality of this power vested in the President to vary rates of duty in the tariff act of 1890 was tested in the case Field V. Clark (143 U. S. 649) which bears upon section 315 of this tariff act.

Mr. Justice Harlan speaking for the Court in the Field case said: "The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to de-

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1."Tariff of 1890, Reciprocal Trade Provisions Section 3." _Statutes of the United States of America_, 51 Congress, 1 Session, Vol. LI, (1889-1890), p. 612.

2._Congressional Record_, 67 Congress, 2 Session, Vol. LXII, (April 24, 1922), p. 5874.

termine some fact or state of things upon which the law makes, or intends to make, its own action depend." Other statutes and decisions have also been examined which make it clear "that Congress may authorize and direct the President to increase or decrease rates of duty upon the ascertainment of a state of facts or conditions prescribed by law. The vesting of power in the President to ascertain the existence of prescribed conditions and to predicate duties thereon is within constitutional limitations."

The power delegated by Congress to prescribe the rate of duty to be imposed differs in nature from the power delegated by Congress to ascertain facts, "for it is a power to prescribe rules of general future application." Delegated powers of this nature in other cases have been sustained by the Supreme Court as in the case of "Butterfield V. Stanaham (1904), 192 U. S. 470,493.: Congress prohibited the importation of the lowest grades of tea by the act of March 2, 1897 and authorized the Secretary of the Treasury to adopt uniform standards to determine such grades. The act was held constitutional."[1]

The question of the constitutionality of Section 316 was defended by Senator McCumber. He defended the elastic feature by referring to the Revenue law of 1916, which was

1. Ibid, (April 24, 1922), p. 5875.

passed by the Democratic party when Wilson was President of the United States. Section 804 of this law states "That whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles from that country, or in case the United States does not import similar articles from that country, then other articles the products of such country, dependency, or colony. And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

Section 805 says that "whenever during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws regulations or practices of any country, colony, or dependency contrary to the law and practices of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil of the United States and not injurious to health or morals is prevented or restricted, the President is authorized and empowered to prohibit or restrict

during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 or more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke or renew such proclamation in his discretion."[1]

The President's power under the law of 1916 was not limited, as he was not limited in the number or in the selection of the articles that he was to exclude. President Wilson had absolute power and no court has challenged the power granted, and it was not a war power, as this power was given to President Wilson before the United States entered the war, and the constitutionality of it could not be based

1. "Unfair Competition, Revenue Act of 1916," United States Statutes At Large, 64 Congress (1915-1917). Vol. XXXIX, Pt. I Public Laws, p. 799.

on anticipation of war. "In case the United States does not import similar articles, then other articles, the products of such country, dependency, or colony" may be excluded ---- an unlimited power to prohibit any article. The power is also given to place a fine on or to imprison the offender.[1]

When section 316 was first written the President was authorized to use any agency of the Government to inquire into unfair methods but now this has been amended and the amendment passed authorizing the Tariff Commission as the agency to be used to investigate any unfair methods that may come up and if the President finds unfair methods exist he can impose an additional duty not to exceed 50 per cent or less than 10 per cent of its value, or he can bar the merchandise from entering the country.[2]

Section 316 also prohibits dumping in the ordinarily accepted meaning of the word; that is, "the sale of merchandise in the United States for less than its foreign market value or cost of production; but also bribery, espionage, misrepresentation of goods, full line forcing, and other similar practices frequently more injurious to trade

1. Congressional Record, 67 Congress, Pt. 11, Vol. LXII, (August 11, 1922), p. 11242.
2. Ibid, Pt. 11, (August 11, 1922), p. 11241.

than price cutting."[1]

"The provisions of Section 316 is guarded in every respect as carefully as we have guarded the provisions of Section 315 as to the hearings and as to the body which shall furnish the President the information, and so forth."[2]

Senator McCumber in his discussion of Section 317 of the tariff bill felt there was more question as to the constitutionality of this provision than of the other provisions that had been discussed, but he said "We have followed to some extent the provisions which are contained in the law of 1890, relating to proceedings in the case of discriminations against the United States, and have kept somewhat short of the power that was granted under the law of 1916."

The broadest statute relating to discrimination is found in the revenue law of 1916, paragraphs 804 and 805.

In the law of 1890 the President had to find the discrimination. In Section 317 "The President is authorized to impose additional duties on the whole or any part of the imports into the United States from any country which discriminates against our overseas commerce."

As to the legality of the Revenue Act of 1916 being imposed in anticipation of war, that gave no greater power

1. Ibid, Pt. 6, (April 24, 1922), p. 5879.
2. Ibid, Pt. 11, (August 11, 1922), p. 11242.

to pass a legislative act at that time than it does today, as the United States was not in war then, nor is it today, yet there is war going on in China.

This section will not interfere with any of our reciprocity treaties.[1]

When this bill went to the conference committee, as far as the Senate was concerned, the duties on all the articles in Title I were based on foreign valuation except Paragraphs 27 and 28 which related to dyes and their derivatives and these were based on American valuation.

The tariff bill as amended by the Senate was agreed to and passed upon August 19, 1922 and a Conference Committee was appointed to confer with a like committee from the House upon the disagreeing votes between the two houses. The report from the Conference Committee was sent back to the House, and the House took up the discussion of the bill as amended September 13 and it was discussed pro and con.

Representative Garner spoke against the new bill condemning it, and the power it put into the hands of the President to lay and levy taxes, also the power of the President to change an article from foreign to American valuation. He declared that the power is taken out of the hands of the

1. Ibid, Pt. 11, (August 11, 1922), p. 11245.

people and put into the hands of the President. There is great danger in doing this as the rates may be raised on some things that the common people have to use, and it will make the cost of living higher for the common people.[1] This power in the hands of the President will not compel fair and equable prices for all, if the President is not in sympathy with the great mass of people, the farmers, wage earners and consumers, and he may not know and realize the problems and struggles of the commoh people. If the President is in sympathy with big interests and wealth then this power to fix prices would be all wrong.[2] It will also ruin business because of the uncertainty of the changes and it is not constitutional. The power to change rates is in the hands of Congress who has no right to delegate it to anyone else.

Representative Fordney led the discussion for the majority members of the House, stating that the House Committee had agreed to the Senate's plan, for the adjusting of the tariff rates by the President, and the committee agreed to adopt the American valuation plan for the foreign valuation when it was needed. The power vested in the President under Section 315 will help our business, commerce

1. Ibid, Pt. 12, (September 13, 1922), pp. 12504-12505.
2. Ibid, Pt. 12, (September 13, 1922), p. 12539.

and the swiftly changing business conditions of the world.[1]

Others referred to the flexible provision as a great improvement over the present law and it should have a fair trial, and there should be a way of changing rates that would not call for a general revision of the tariff, as a general revision disturbs business and raises a political issue.[2]

Representative Green of Iowa said that, "It has been urged that the tariff should be taken out of politics and put upon a scientific basis. This is the first time in our legislative history that a tariff has a provision by which this theory may be carried out" and the President can only make changes as they are recommended by the Tariff Commission, which is composed of a body of experts.[3]

It was argued by Kreider of Pennsylvania that no President is going to abuse this power, and only a few things will need adjusting and this will save writing a new bill, which would cause a business depression.[4]

The Senate took up the report of the conferees and Senator Simmons objected immediately to the action of the Conference Committee. He felt that they had "exceeded their

1. Ibid, Pt. 12, (September 13, 1922), pp. 12508-12509.
2. Ibid, Pt. 12, (September 13, 1922), p. 12516.
3. Ibid, Pt. 12, (September 13, 1922), p. 12503.
4. Ibid, Pt. 12, (September 13, 1922), p. 12550.

authority in the matter of the authorization to the President to proclaim the so-called American valuation." The Senate had limited "The power of the President to proclaim American valuation, and confined his power to exercise that authority to dyestuffs and other things specified in paragraphs 27 and 28 of the bill." No power had been conferred on the President in the House bill in regard to the American valuation plan. The President can now proclaim the American valuation for every one of the 4,000 items in the bill, if he feels that the investigations justify it. This act on the part of the committee is a clear usurption of power of legislation on the part of the committee, and it is not right as it may vitally affect the tax payers of our country. The Senate had limited the power of the President and conferees changed the entire valuation plan of the bill giving the President more power.[1] This will give the President power to double some of the taxes on the American people, and it will also add a tax to the necessities of life.[2]

The President of the Senate was asked to decide the point of order as to whether the "conferees have exceeded their authority in the matter of authorizing the President

1. Ibid., (September 16, 1922), p. 12755.
2 Ibid., (September 16, 1922), p. 12756.

to proclaim the so-called American valuation". The President of the Senate over-ruled the point of order and the decision of the chair was sustained by the Senate.[1]

Senator Simmons argued that this conference report shows the danger of the influence of special interests in influencing rates; as they want rates based on American valuation. The President has practically obtained the controll over the tariff rates, the people will pay for this and he also has power over business interests of the United States. The Conferees have given him more control. The President, according to the Senate rulings, was to have all the hearings public but this is changed, so part of it is done secretely. The elastic provisions of this bill have caused an uncertainty in tariff matters. The power given to the President in this bill can make or break an industry, and it makes business uncertain; as any industry or branch of industry can ask for a change in tariff rates. This power of flexibility in the hands of the executive will constitute a powerful political influence and it will help to create a great political machine.[2]

Senator Underwood in speaking of the President's power said that the President can increase or decrease the rates,

1. Ibid, (September 18, 1922), p. 12795.
2. Ibid, (September 18, 1922), pp. 12806-12809.

but he will increase them; as it is the theory of his party to build a wall around the country in order that prices may be advanced for the benefit of the American producer.

There are no clauses in this bill to check the President from increasing or decreasing the taxes levied 50 per cent of rates found in the bill after the Tariff Commission's report, and in some cases the rates can be increased 100 per cent when based on American selling price.[1]

Senator McCumber defended the report of the conference committee and the changes made in the elastic features of the bill, while it was in the hands of the conferees. He justified the changes made in the elastic features by the conference committee by saying that as the bill came over from the House it provided for the American valuation on every matter on which the duties were to be levied ad valorem. "The Committee has not introduced any new matter but we have allowed the House to accept our foreign valuation in its entirety with the exception of those cases where the duty shall not equalize the difference in the cost of production at home and abroad, then the American valuation basis may be retained. The Committee was divided, some of them demanded American valuation as the basis for changing

1. Ibid, Pt. 12, (September 19, 1922), p. 12888.

the rates, others wanted foreign valuation with American valuation applied to paragraphs 27 and 28 (dyes and their derivatives). The disagreements were finally settled by the Committee making special provisions for a return to the American valuation, which was the House scheme, on condition that if the rates fixed in the bill did not give sufficient protection the President could not raise the rate, but could simply, by adopting the American valuation, thereby secure a higher rate of duty". This was a giving in upon the part of the Senate also on the part of the House.

The President is still limited in his power; as the rates on the articles under Title I can only be raised or lowered to "The sum which shall measure the difference in the cost of production at home and abroad". The rates on most of the articles are sufficient to measure this difference without returning to the American valuation. This may not be true of coal tars.[1]

This will protect our American industries, and the provision conferring power on the President to raise and lower duties is one of the best provisions in the bill, and the President is not likely to increase the rates if he follows the suggestions of the Tariff Commission.

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1. Ibid, Pt. 12, (September 16, 1922), p. 12753.

These amendments constituting Sections 315, 316 and 317 of the Senate bill are necessary and this fact has been demonstrated in the past.[1]

The Fordney-McCumber bill passed the House and the Senate September 20, 1922 and the President signed the bill September 21, 1922.[2]

CHAPTER IV. CONSTITUTIONALITY OF THE ELASTIC PROVISIONS

The question of the constitutionality of Section 315 has arisen several times. Numerous protests were filed at various ports of entry against the action of the collectors of customs in assessing duties under the proclamations of the President. "These protests relate to wheat, wheat flour, barium dioxide, sodium nitrate, oxalic acid, potassium chlorate, men's sewed straw hats, butter, print rollers, iron in pigs, and methyl alcohol, --- Practically all of the protests specifically allege the unconstitutionality of Section 315." Others say that the duties imposed by the tariff act of 1922 equalize the differences in the cost of production.[3]

The United States Supreme Court upheld the constitu-

1. Ibid, Pt. 12, (September 19, 1922), p. 12896.
2. Ibid, Pt. 12, (September 22, 1922), p. 13131.
3. "Protests Against Assessments of Duties Under Presidential Proclamation", Eleventh Annual Report of the United States Tariff Commission, (1927), p. 14.

tionality of this flexible feature in the case of "J. W. Hampton, Jr., & Co. V. U. S. (276 U. S. 394)".[1]

The issue in this case was as to the constitutionality of section 315. The President of the United States had increased the rates on barium dioxide and the importers J. W. Hampton, Jr., & Company in importing barium dioxide objected to paying the increased rate on barium dioxide. The importers had two contentions, first, they argued "that the section is invalid in that it is a delegation to the President of the legislative power, which by article I, Section I of the Constitution, is vested in Congress, the power being that declared in Section 8 of Article I, that the Congress shall have power to lay and collect taxes, duties, imposts and excises. Their second objection is that, as Section 315 was enacted with the avowed intent and for the purpose of protecting the industries of the United States, it is invalid because the Constitution gives power to lay such taxes only for revenue.[2] The Court ruling was:

"Taxes are occasionally imposed in the discretion of the legislature on proper subjects with the primary motive of obtaining revenue from them, and with the incidental mo-

1. "Constitutionality of Flexible Tariff Provision," United States Daily, Yearly Index, 2647 (December 29, 1928), p. 1, c. 4.
2. "J. W. Hampton, Jr. & Company V. United States, United States Supreme Court Reports, Law Ed. 72, October Term, U. S., 275-277, p. 628.

tive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive." And so here the fact that Congress declares that one of its motives in fixing the rates of duty is so as to fix them that they shall encourage the industries of this country in the competition with producers in other countries in the sale of goods in this country cannot invalidate a revenue act so framed. Section 315 and its provisions are within the power of Congress. The judgment of the Court of Customs Appeals is affirmed."[1]

The Court also made it very "plain that neither the Tariff Commission nor the President fixes the duties. That is done by the Congress. Of the Tariff Commission it was said; "The Tariff Commission does not itself fix duties, but before the President reaches a conclusion on the subject of investigation, the Tariff Commission must make an investigation and in doing so must give notice to all parties interested and an opportunity given to adduce evidence and be heard.[2]

CHAPTER V. OPERATION AND EFFECTS OF THE ELASTIC PROVISION

Under section 315 the President was authorized to make

1. Ibid, p. 632.
2. "Constitutionality of Flexible Tariff Provisions", <u>United States Daily</u>, Yearly Index 2647, (December 29, 1928) p. 5, C. 5.

the rules and regulations necessary for carrying out the elastic provisions. The following executive order was issued by the President to the Tariff Commission.

Executive order:

"It is ordered that all requests, applications, or petitions for action or relief under the provisions of sections 315, 316 and 317 of Title III of the tariff act approved September 21, 1922, shall be filed with or referred to the United States Tariff Commission for consideration and for such investigations as shall be in accordance with law and the public interest, under rules and regulations to be prescribed by such commission".

Warren G. Harding.[1]

The Tariff Commission acting under the executive order of October 7, 1922, adopted and made public its rules of procedure under sections 315, 316 and 317.

The following simple rules were to be observed. An application for investigation under these rules can be made by any firm, partnership, corporation or association. The applicant does not need to follow any special form in applying, but the application must be made in writing and signed

1. "Executive Order and Rules of Procedure. Before the United States Tariff Commission under Sections 315, 316, and 317 of Title III of The Tariff Act approved September 21, 1922", Seventh Annual Report of the United States Tariff Commission, (1923), p. 53.

by or in behalf of the interested party or parties.

Each application must contain the name, business and business address of each applicant and a short statement of the purpose and the relief sought. The commission examines the application, and if there is sufficient reason for further investigation of the case it is so ordered.

The Tariff Commission in considering applications under 315 must consider whether the case warrants the forbidding of the entry of goods while the case is being investifared.

The Tariff Commission may also take the initiative in ordering investigations under sections 315 and 316 after conferring with the President. If an investigation is necessary under section 317, it is conducted in the same way as the hearings are conducted under sections 315 and 316.[1]

After an investigation is ordered a plan of the investigation and an estimate of the costs is made out and submitted to the advisroy board. This board approves it and then the chief commissioner receives his instructions in writing and the field work begins both at home and abroad by making careful estimates of cost, factory, and wholesale prices, wages and other conditions that enter into the competition of the commodity investigated. This information is tabulated and kept for future reference. All of this information is brought together by the Commission at Washing-

1. Ibid, pp. 53-54.

tee and preparations are then made for public hearings.

Notices of the public hearings are posted in public places 30 days beforehand, so that any interested parties may appear or send a representative to these hearings. Persons who are known to be interested are notified of the time and the place of hearing by registered mail. These hearings are public unless the committee orders otherwise. The Committee can order witnesses to appear that they wish, and they can require them to bring documentary evidence. A brief must be filed by those who give testimony.

Members of the Commission can investigate cases and receive testimony, but they must summarize all their evidence both oral and written in a written report for the commission. The final hearings are held before the Commission, and parties who have previously entered appearances may file their briefs and get permission to present an oral argument.

The final findings of the commission must be in writing, and the commission brings together these reports of the hearings and the briefs submitted, and all other data, and the important information is formulated into a report which is approved by the advisory board. Upon these facts the Commission base their reports to send to the President.

The President examines the report, and if he sees the need of a change in the rates of the commodity, he issues

his proclamation declaring a change in the rate.[1-2]

The work of the Tariff Commission in connection with the elastic features of Sections 315, 316 and 317, has been quite varied, and it has called for a large expenditure of both time and money.

The Commission has been called upon to investigate the cost of production of a number of articles, under Section 315, and some cases have come up for investigation under Sections 316 and 317. Some of the investigations of different articles have been discontinued and in other cases applications have been withdrawn.

The following is a summary of the number of activities of the United States Tariff Commission since 1922:

"Under Section 315

Number of commodities covered by 603 applications	375
Number of commodities covered by investigations instituted	91
Reports completed and sent to President covering 56 commodities	43

Under Section 316

Complaints received	25
Investigations instituted	6
Reports completed and sent to President....	5

1. Ibid, pp. 53-55.
2. "United States Tariff Commission Flexible Tariff", Dictionary of Tariff, (1924), pp. 333-5.

Under Section 317

Applications received	9
Reports completed and sent to President	12
Reports completed and sent to Department of State	6"[1]

It may be seen from the table given that 375 commodities were covered by 603 applications. Two hundred of these commodities were covered by applications requesting increases in duty, 125 commodities were included in applications requesting decreased and for 25 commodities requests were made for adjustments of the rates of duty.

The Commission has instituted 83 investigations covering 91 commodities. In connection with these 83 investigations there were submitted to the Commission 176 applications. The Commission has completed and sent to the President, under provisions of Section 315 of the tariff act of 1922, reports concerning 56 commodities involving 110 applications.

Rates of duty have been changed by presidential proclamation on 38 commodities covered in 76 applications. In 33 instances the duties have been increased by proclamation and in 5 instances they have been decreased. Two of the 33 increases have been increases in the finished products neces-

1. "Activities of the United States Tariff Commission since 1922". Thirteenth Annual Report of the United States Tariff Commission", 1929, p. 10.

sitated by increases in the duties on the raw materials, but the increases of duties on the finished products are not as great as the increases of duties on the raw material and they really represent a decrease when you compare them with the raw materials. By presidential proclamation the duty on flour was increased 33-1/3 per cent while the duty on the wheat was increased 40 per cent. Likewise, the duty on linseed oil was increased 12.1 per cent in contrast to an increase of 40 per cent on the raw material, flaxseed.[1]

"In addition to the 38 commodities in connection with which presidential proclamations have been issued, there have been 18 commodities on which the commission has submitted reports to the President and upon which no proclamations have been issued. With respect to two of these, sugar and cotton fabric gloves, the President has issued statements setting forth the reasons for not changing the duties. These 18 commodities were the subject of 34 applications".

Many of these applications were duplicates. For example, there were 117 applications at the close of 1929 looking toward a reduction in the duty on wild game birds.

"Upon the subjects of vegetable and animal oils, 19

1. Ibid.

separate applications from different persons or organizations were received; 10 were received on canned tomatoes." This shows how duplicate applications come in.

Of the 375 commodities covered by the applications received, 147 have been withdrawn by the applicants or the investigations covering them have been suspended or dismissed by the Commission".[1]

A part of the remainder of the 83 investigations started by the Commission have reached various stages of completion and work suspended due to other demands made upon the Commission. For instance the Commission has been called upon to furnish information for the new tariff of 1930.[2]

The following table gives a list of the articles and sums up the work done by the Commission:

1. United States Tariff Commission "With Respect To The Flexible Tariff In Particular", Thirteenth Annual Report of the United States Tariff Commission, (1929), p. 11.
2. Ibid, p. 12.

INVESTIGATION INSTITUTED AND PRESENT STATUS THEREOF FROM 1922 TO 1929

(A) Under Section 315

Commodity	Investigation Instituted	Present Status
Schedule I. Chemicals		
Tartaric acid	March 4, 1926	Work suspended
Amino acids and salts	August 11, 1923	Work suspended
Cream of tartar	March 4, 1926	Work suspended
Barium chloride	July 20, 1928	Work suspended
Casein	July 20, 1928	Report sent to President
Whiting	May 26, 1927	Report sent to President
Synthetic phenolic resm	May 4, 1923	Work suspended
Logwood extract	March 27, 1923	Work suspended
Edible gelatin	July 24, 1925	Work suspended
Glue	July 24, 1925	Work suspended
Animal and Vegetable oils and fats	February 8, 1924	Work suspended
Decolorizing carbons	August 11, 1928	Work suspended
Potassium nitrate	April 18, 1928	Investigation discontinued
Sodium phosphate	May 26, 1927	Work suspended

Schedule II. Earth, Earthenware and Glassware

Table and kitchen china and earthenware	March 19, 1925	Work suspended
Blown glass tableware	July 12, 1928	Work suspended
Perfume and toilet bottles	May 26, 1927	Work suspended

Schedule III. Metals and Manufacturer of

Mirror plates	March 27, 1923	Work suspended
Granite	July 24, 1925	Report sent to President
Tungsten	May 14, 1928	Work suspended
Swiss patter files	March 27, 1923	Work suspended
Metallix magnesium	July 27, 1923	Work suspended

Schedule IV. Wood and Manufacture of

Logs of fir spruce, cedar and western hemlock	(July 2, 1923 (April 1, 1924	Report sent to President
Bent-wood chairs	April 23, 1925	Work suspended

Schedule V. Molasses

Sugar	March 27, 1923	Report sent to President July 31 and August 1,1924. Statement issued by the President on June 15, 1925.
Maple syrup and sugar	February 25, 1927	Report sent to President
Rare sugars	August 11, 1923	Work suspended

Schedule VII. Agricultural

Halibut	August 11, 1924	Report sent to President
Corn	June 24, 1927	Report sent to President
Matzos	July 26, 1928	Report sent to President
Cotton seed	May 26, 1926	Report sent to President
Soy beans	May 26, 1926	Report sent to President
Potatoes white	April 20, 1928	Report sent to President
Fresh tomatoes	June 10, 1927	Work suspended
Canned tomatoes	June 10, 1927	Report sent to President
Tomato paste	October 14, 1927	Report sent to President
Peppers fresh and sweet	April 18, 1928	Work suspended

Schedule IX. Cotton Manufacture

Cotton gloves of warp knit fabrics	March 27, 1925	Report submitted to President. Statement issued by the President

Schedule X

Cotton hosiery	March 27, 1923	Report sent to President

Schedule XI. Wool and Manufacture of

Oriental rugs	October 28, 1926	Investigation discontinued.

Schedule XIV. Sundries

Lace	October 25, 1923	Work suspended
Imitation pearls	May 26, 1927	Work suspended
Cork insulation and cork tube	May 31, 1928	Work suspended
Artificial flowers, fruits, etc.	May 27, 1925	Work suspended
Handkerchiefs	May 28, 1928	Work suspended
Smokers' articles Synthetic phenolic resin	May 4, 1925	Work suspended
Brier wood pipes	May 4, 1923	Work suspended [1]

1. "Data Relating to Investigations By the Commission Under Section 315, 316, and 317 Of The Tariff Act of 1922, and Under Its Central Powers", Thirteenth Annual Report of The United States Tariff Commission, (1929), pp. 244-248. (Ed. 1930).

The following table is a list of the subjects with respect to which changes in rates of duty have been proclaimed by the President under the provision of Section 315 since the enactment of the Tariff Act of 1922:

+ means to increase
- means to decrease

Article	Commission Report	President's Action	Date of Proclamation	Amount raised or lowered
Wheat		+	March 7, 1924	30¢ to 42¢ per bushel(60#)
Flours, semolina, etc.		+	March 7, 1924	78¢ to 1.04 per 100#
Mill feeds; bran; etc.		-	March 7, 1924	15¢ to 7½% ad valorem
Sodium nitrate	+	+	May 6, 1924	3¢ to 4½¢ per pound
Barium dioxide	+	+	May 19, 1924	4¢ to 6¢ per pound
Diethy pharbituric acid	+	+	November 14, 1924	25% ad valorem American selling price
Oxalic acid	+	+	December 29, 1924	4¢ to 6¢ per pound
Potassium chlorate	+	+	April 11, 1925	1½¢ to 2¼¢ per pound
Bobwhite quail	-	-	October 3, 1925	50¢ to 25¢ each (Valued at $5.00 or less)

Taximeters	*	*	December 12, 1925	$3.00 each 45% ad valorem on foreign value to $3.00 each 27.1% on American Selling price
Men's sewed straw hats	*	*	February 12, 1926	60% ad valorem to 88% ad valorem on hats valued at $9.50 or less per dozen
Butter	-	*	March 6, 1926	8¢ to 12¢ per pound
Print rollers	*	*	June 21, 1926	60% ad valorem to 72% ad valorem
Paint brush handles	-	-	October 14, 1926	33-1/3% ad valorem to 16-2/3% ad valorem
Methanol	*	*	November 27, 1926	12¢ to 18¢ a gallon
Gold leaf	Questioned	*	February 23, 1927	55¢ to 82½¢ per 100 on leaves 3 x 3; larger in proportion
Iron in pigs	*	*	February 23, 1927	75¢ to 1.12 per T.
Emmethaler swiss cheese	*	*	June 8, 1927	5¢ to 7½¢ per lb. 25% ad valorem 37½% ad valorem
Cresylic acid	-	-	July 20, 1927	40% ad valorem to 7¢ per lb. based on American selling price
Phenol	-	-	October 31, 1927	20% ad valorem based upon American selling price
Crude magnesite	*	*	November 10, 1927	5/16 of 1¢ to 15/32 of 1¢ per pound

Caustic calcined	*	*	November 10, 1927	5/8 to 1¢ to 15/16 of 1¢
Cherries sulphured or in brine stemmed or pitted	*	*	December 3, 1927	2¢ to 3¢ per pound
Rag rugs (cotton)	*	*	February 13, 1928	35% ad valorem American selling price
Barium carbonate, precipitated	*	*	March 26, 1928	1¢ to 1½¢ per pound
Sodium silico fluoride	*	*	August 31, 1928	25% ad valorem American selling price
Fluorspar	*	*	October 17, 1928	$5.60 per T to $8.40 per T.
Potassium manganate	*	*	November 16, 1928	4¢ to 6¢ per pound
Onions	*	*	December 22, 1928	1¢ to 1½¢ per pound
Cast polished plate-glass finished or unfinished and unsilvered	Some - Some *	*	January 17, 1929	12½¢ to 16¢ per sq. ft. on 384 sq. in. 15 to 19¢ per sq. ft. between 384 sq. in. and 720 sq. in. 17½¢ to 22¢ per sq. ft. above 720 sq. in.
Peanuts not shelled and shelled		*	January 19, 1929	3¢ to 4½¢ lb. unshelled 4¢ to 6¢ shelled
Whole eggs, egg yolk, egg albumen	*	*	February 20, 1929	6¢ to 7½¢ per pound
Flaxseed		*	May 14, 1929	40¢ to 56¢ per bu. of 56 lbs.

Milk fresh	*	*	May 14, 1929	2½¢ lb. 5¢ per gallon.
Cream	*	*	May 14, 1929	20 to 30 per gallon
Window glass; (cylinder crown: sheet glass unpolished)	*	*	May 14, 1929	1¼¢ to 1¢ per lb. on sizes not exceeding 150 sq. in.
				1-3/8 to 2-1/16¢ per lb. above 150 sq. in. to 384 sq . in.
				1-5/8 to 2-7/16¢ per lb. 384 to 720 sq. in.
				1¾ to 2-5/8 ¢ per lb. 720 to 864 sq. in.
				2¢ to 3¢ per lb. 864 to 1200 sq. in.
				2¼ to 3-3/8¢ per in. 1200 to 2400 sq. in.
				2½ to 3⅝¢ per lb. above 2400 sq. in.
Linseed or flaxseed			June 25, 1929	3.3¢ to 3.7¢ per lb.
1	2	1	1	1

1. United States Tariff Commission: "Tariff Changes Under Section 315, Thirteenth Annual Report of the United States Tariff Commission,(1929), pp. 24-25.
2. Reports of The United States Tariff Commission To The President Of The United States, (1922-1929).

INVESTIGATIONS INSTITUTED AND PRESENT STATUS THEREOF

(B) Under Section 316

Commodity	Investigations Ordered	Present Status
Schedule 3. Metals and Manufacture of		
Certain revolvers alleged to be manufactured in simulation of the Smith & Wesson product.	June 3, 1924	President approved findings of Commission continuing suspension of entry of certain revolvers and revoking suspension as to others
Schedule 9. Cotton Manufactures		
Sanitary napkins	October 14, 1924	President approved findings of Commission and dismissed complaint
Schedule 10. Manufacture of		
Flax, jute, hemp, etc. Manila rope.	April 20, 1926	President approved findings of the Commission and issued order forbidding importation of rope improperly described as Manila rope or bolt rope.
Schedule 14. Sundries		
Laminated products composed of paper or other materials and infusible and insoluble condensation products of phenols and formaldehyde	December 23, 1927	President approved findings of Commission and dismissed complaint

Synthetic phenolic resun of Form C and articles made thereof	April 16, 1926	Temporary order of exclusion from entry in effect. Commission's appeal pending in Court of Custom Appeals

[1]

The adjustments of difficulties arising under Section 317 have caused very little trouble. "Since the passage of the Tariff Act of 1922, reports have been submitted to the President, pursuant to the provisions of Section 317, upon all important existing discriminations against the commerce of the United States by means of tariff rates and regulations. The President has secured the removal of important discriminations without imposing the retaliatory duties authorized by this section of the Act".

The following table gives a list of articles that have been under investigation under Section 317.[2]

1. "Data Relating to Investigations by the Commission under Sections 315, 316 and 317 of The Tariff Act of 1922", Thirteenth Annual Report Of The United States Tariff Commission, (1929), p. 248.
2. "Applications received under Section 317", Thirteenth Annual Report of the United States Tariff Commission, (1929), p. 243.

Articles	Investigation Ordered	Present Status	
	Schedule I		
Chemicals, oils, and paints	November 15, 1922	Investigation Rediscrimination	Investigation Undertaken
Cotton seed oil	January 10, 1923	Investigation Rediscrimination	Investigation Undertaken
Bichromate	October 26, 1922	Investigation Rediscrimination	Investigation Undertaken
	Schedule III		
Metals and manufacture of automobiles	October 24, 1922	Investigation Rediscrimination	Investigation Undertaken
	Schedule XVI Free List		
Refined oil and gasoline	December 13, 1923	Investigation Rediscrimination	Investigation Undertaken
Flooring: hardwood	March 24, 1923	Investigation Rediscrimination	Investigation Undertaken
Other applications, Discrimination in Guatemala	June 16, 1923	Investigation Rediscrimination	Investigation Undertaken
Discrimination in Australian tariff	November 30, 1923	Investigation Rediscrimination	Investigation Undertaken

In the investigation which the Tariff Commission have carried on it was necessary to ascertain foreign cost of production as nearly as possible; as a whole the committee has been fairly successful in doing this and their success in securing this data for Section 315 may be summarized as follows: [1] "Out of a total of 83 investigations for the purpose of Section 315, foreign cost of production data were obtained in 49 instances. In only 9 investigations were costs not obtainable because of objections of foreign governments or because foreign producers refused to give cost data. Of these 49, in which costs were obtained, costs in 46 were checked directly to the book of the producers; in two instances statements of foreign costs were obtained, but no opportunity was granted for examination of the original cost records, and in one instance costs were calculated from collateral information, such as prices, wages, and prices of raw materials. In 21 of the remaining 33 investigations invoice prices were used as evidence of foreign costs; in 9 of these, invoice prices used either because of the objection raised by foreign governments or because foreign producers refused cost data, either because other information available to the commission made it unnecessary or because the

1. "Difficulties Encountered in the Administration of Section 315", Thirteenth Annual Report of The United States Tariff Commission, (1929), p. 18.

commission had reason to believe that foreign cost data could not be obtained. The remaining 12 investigations have either been suspended or have not reached the ascertainment of foreign costs."

The following table sums up foreign costs of production and other data obtained by the Tariff Commission under Section 315 of the Tariff Act of 1922:

"Foreign cost data obtained:	
Foreign cost data obtained and verified	46
Statements of foreign cost data obtained but not verified	2
Costs calculated from collateral information including prices; wages, etc.	1
Total number of investigations in which cost data have been obtained	49
Invoice prices used:	
Invoice prices used either because of objections raised by foreign governments or because of refusal by foreign producers	9
No attempt used to secure foreign data because other information available	12
Total number of investigations in which invoice prices used	21
Investigationswhich have been suspended or have not reached the stage where foreign cost data have been attempted	12
Total investigations ordered by the Commission for purposes of Section 315	82[1]

1. Ibid, p. 18.

In 1923, 45 manufacturers asked for an increase in rates on the finished products while 5 asked for a decrease, and 36 importers asked for a decrease on the finished products and there were no demands for an increase from the importer and only 2 consumers asked for a decrease.[1] This shows when the law first went into effect the manufacturers and importers were in the lead in their demand for changes.

During the year 1927 the agricultural interests made more demands than usual for the investigation of farm products under Section 315. The following are some of the commodities that the Tariff Commission were asked to investigate: milk, cream, peanuts, sugar, beans, cottonseed, onions, flaxseed, eggs, and egg products, maple sugar and syrup cherries, fresh tomatoes, canned corn, and canned tomatoes.[2]

"The most important investigations conducted under this provision of the law during the year 1928 from the point of view of time and expense have been under the ceramics schedule (schedule 7) of the Tariff Act. Important subjects under investigation in the ceramics schedule have been plate glass, window glass and blown glass tableware."

1. "Applications Received", Seventh Annual Report of the United States Tariff Commission, (1923), p. 36.
2. Marvin, T. O., "Agriculture Investigations", American Year Book, (1927), p. 365.

"During the fall and winter of 1928 and early part of 1929 the Commission concentrated upon the completion of 15 reports to the President under the provisions of Section 315 of the present Tariff Act, and in a period of a few months more reports were completed than in any other similar period since the enactment of the flexible provisions". These reports included important and extensive subjects. In some of these subjects the applications for investigation were made in 1927.[1]

The rate on methanol was increased from 12 to 18¢ per gallon in 1926. In the twelve months preceding the change in rates 754,917 gallons were imported at 46¢ per gallon, and in the 12 months following the change 1,714,442 gallons were imported at the average price of 42¢ per gallon. In 1928 there were 379,291 gallons imported and the average price was 34.1¢ per gallon. These figures show a decrease in the amount shipped into the United States; they also show a decided decrease in price. So it is impossible to say an increase in rates sends the prices up as some claim.

The President increased the rate of duty on pig iron in 1927 and the Tariff Commission says of this commodity that it is hard to tell what effect the raising of the tariff

1. Ibid, (1929), p. 426.

rates has had on pig iron as there have been many changes in its price since the duty became effective. The prices on pig iron have been low in the United States until 1929, then there was a tendency for prices to increase.

An interesting report is given of wheat. The President raised the tariff rates on wheat in 1924. The duty on this commodity was changed from 30 to 42¢ per bushel in 1924. The annual imports of this commodity declined from 8,930,000 bushels in 1923 to the low level of 21,000 bushels in 1927. In 1928 the imports increased to 224,000 bushels. The price of spring wheat in January of 1924 was $1.24 and in January 1929 it was $1.29. In July of 1924 the price of spring wheat was $1.47 and in July of 1929 it was $1.50. Judging from these figures other conditions must enter in to affect prices.[1]

Some of the effects of the change of rates on imports and prices are shown by the following figures. The President changed the rates on barium dioxide in 1924. Average price of barium dioxide in 1923 was 17¢ per pound and 1,810,593 pounds were imported. In 1928 the average price was 12¢ per pound and 12,142 pounds were imported. These

1. "Statistics of Commodities On which Changes in Rate of Duty Have Been Made under Section 315", Thirteenth Annual Report of the United States Tariff Commission, (1929), pp. 181-183.

figures show a decrease in the amount of barium dioxide imported and also a decrease in the price. The increase in rates did not cause the price to keep up.

In 1928 the rate of duty on barium carbonate was increased. The imports into the United States showed an increase the two months preceding the raise in rates, and the price at this time was $47.50 to $55.00 per ton. The importation of barium carbonate was negligible the first month after the raise in rates. The second month after the raise in rates there was no barium carbonate shipped in, but the price of this commodity had increased to $57.50 - $60.00 per ton.[1]

There has been more or less agitation for and against the elastic feature in the newspapers and periodicals. Some say that it will tend to centralize the government just that much more in the President and he can more than double the tax on the American people.[2]

In an editorial in the New York Times the following opinion of the elastic feature was given: "The Supreme Court of the United States has upheld the constitutionality of the flexible provision of the tariff, but this does not prove

1. "Effects of Changes", Twelfth Annual Report Of the United States Tariff Commission, (1928), pp. 130-131.
2. "A Tariff That Will Stretch", Literary Digest, Vol. LXXV, (October 7, 1922), p. 11.

that it is good; as the flexible clause has not worked and does not work in modifying the tariff, and the modifying of the tariff rates by this means is far from satisfactory as the rates have been increased in important products."[1]

In another article it says that the National Board of Farm Organizations informs the President that "The flexible Tariff provision is very unpopular with the leaders of the farm organizations and the cooperatives."[2] It "has failed in practical value and kept business in a state of uncertainty", it has also consumed a large amount of the President's time as well as the time of the Tariff Commission is the opinion of Representative Hull.[3]

Senator Capper argues that the flexible provision will help to solve the farm problem, and the reasons for retaining this flexible feature are more pronounced than ever before as "local and world economic conditions are changing constantly —— so far as individual commodities and their production and distribution costw are concerned." The flexible provision is needed to protect agriculture and industry and to guard the consumer. Adjustments are needed and should be based upon accurate information, and they should

1. "Flexible but Unworkable", New York Times, (April 11, 1928), p. 28, c. 1-2.
2. "Flexible Postponement, New York Times, (August 29, 1924), p. 10, c. 5.
3. Hull, Cordell, "The Tariff Bill", The Congressional Record, (May 28, 1929), p. 2.

be made quickly for these reasons. Congress should retain the flexible revision in the tariff law.[1]

CHAPTER VI. SUMMARY AND CONCLUSIONS

It is impossible to make an accurate statement in regard to the actual results on prices and business conditions due to the changes that have been made under the flexible features of the tariff law of 1922., but there are some outstanding facts.

The Tariff Commission has instituted 83 investigations covering 91 commodities and these investigations were covered by 176 applications. Many of these applications have been duplicates. Out of the 83 investigations instituted 48 have been completed covering 56 commodities. The reports of these investigations were sent to the President. The President by proclamation has changed the rates on 38 of these commodities. He increased the rates on 33 of them and he decreased the rate on 5 insignificant ones. In the changing of the rates the President has generally followed the recommendations of the Tariff Commission. This shows that the Presidents have not abused the power that was given to them by Congress. The Tariff Commission has not gone to the extreme

1. Speech of Honorable Arthur Capper, Pamphlet, United States Senate, (October 2, 1929), p. 7.

in authorizing investigations as they have only investigated 22-1/7 per cent of all the commodities where investigations were asked for in the period from 1922-1929.

Under Section 315 the Tariff Commission has received 28 complaints and investigations were instituted in 6 cases and in five of these cases the reports have been completed and sent in, as all interests would ask and did ask for the rates favoring their business. The farm interests made more demands in 1927. A study of the applications for the revision of the tariff under the elastic features show that the demands for the revision of the tariff have come from all sections of the country, and we can no longer say that the South, the West, or agricultural interests do not want a change in the rates. They are all alive to the special interests of their own sections and want rates that will favor their own sections.

It is impossible for the President, the Tariff Commission or any other authorized power to obtain accurate data of costs in their investigations as so many things enter in to affect the cost of production.

The effect of the change of rates is difficult to analyze. In many cases prices have gone up and in other cases prices have fallen after the President raised the rates. Demand and supply would affect the prices of manufactured

products. In the agricultural regions shortage of crops or over production would also affect the prices of the different commodities. The tariff rate on wheat was raised in 1924. This seemed to check the importation of wheat but there was only a three cent gain in the price of wheat in the year of 1924,,as compared with 1929 as wheat was quoted at $1.47 in 1924 and in 1929 at $150. This does show that the change of tariff rates does not necessarily raise the price of the commodity, that there are other things that enter in.

The adjusting of the rates under the flexible provision has not caused a disturbance in the business world, and there has not been the uncertainty connected with it, that comes in a general revision of the tariff and changes in rates can be made in a shorter period to meet emergencies. This is a scientific way to handle the tariff, as the Commission has a great deal of information at hand, and they can investigate an application thoroughly before they order an investigation. They are able to obtain information at home and abroad, and then the parties who are interested, or who are concerned in the change have a chance to present their interests. The Commission's recommendation to the President depends upon the information they have obtained through their investigations and this gives the President reliable information before he makes a change in the rates.

If the Tariff Commission can be kept out of politics, this new method of revising the tariff will be a great improvement over the old one.

This way of revising the tariff should bring quick relief to an industry or agricultural interest in an emergency as we want America to be nationally independent.

Congressmen have certainly approved of the elastic feature as they have retained it in the new tariff law of 1930.

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